IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.857 OF 2005
IN
SUIT NO.1204 OF 1995

Bansidhar Annaji Bhakad ...Plaintiff
vs.

Ismail Yusuf College Jogeshwari
Bombay and Anr. ...Defendants

Ms Geeta Shastri,A.G.P.for the Applicant in chamber summons
Mr.R.B.Paranjape i/b Mr.S.N.Gaware for the plaintiff

CORAM: A.S.OKA,J.
DATE : AUGUST 13,2007

P.C.:

1. Heard the learned counsel for the defendants in support of the chamber summons and the learned counsel for the plaintiff who has opposed the chamber summons.

2. The plaintiff has filed a suit for recovery of a sum of Rs.43,00,900/- against the defendants as loss and damages as per the particulars of the claim set out in Exh.A to the plaint.

3. According to the case of the plaintiff, he was appointed as a lecturer on temporary basis on 5th September 1986. Further case of the plaintiff is that with effect from 5th September 1989, the plaintiff was appointed as a lecturer on regular basis with the first defendant college. The

defendants came out with a letter dated 2nd September 1993 contending that the employment of the plaintiff will be treated as temporary. On 1st December 1993, the Defendants terminated the employment of the Petitioner. By a notice dated 13th December 1989, the Plaintiff issued a notice to the second defendant calling upon the second defendant to reinstate him in service. A reminder was sent on 28th January 1994. As there was no response from the second defendant, the plaintiff filed the suit for recovery of damages for the wrongful termination of his employment.

4. This Chamber summons is taken out for referring to and relying upon the orders passed by this court in Writ Petition No.1355 of 1999 as well as the orders passed in Original Application No.531 of 1992 by the Maharashtra Administrative Tribunal. By the proposed amendment it is contended that in the Original Application No.531 of 1992, the plaintiff was shown as Applicant No.7. It is contended that the Applicants in the said Application including the present Plaintiff filed a Special Leave Petition in the Apex Court in which the Plaintiff was shown as the Petitioner No.16. The said Special Leave Petition was filed for setting aside the order dated 22nd April 1992 passed in the Original Application No.531 of 1992 by the Maharashtra Administrative Tribunal.

5. By the proposed amendment the defendants desire to refer

to and rely upon the proceedings as well as the orders passed in the proceedings including the order dated 25th August 1992 passed by the Apex Court. The submission of the learned counsel for the defendants is that the proposed amendment is necessary to be allowed for effectually adjudicating the dispute involved in the suit.

6. The learned counsel for the plaintiff submitted that the chamber summons deserves to be dismissed only on the ground of delay as the plaintiff has filed his affidavit in lieu of examination in chief in the year 2003. He submitted that the plaintiff had not signed Vakalatnama for filing the Original Application No.531 of 1992 the proceeding of which are sought to be relied upon by the defendants. He submitted that inspection of the relevant documents has not been offered to the plaintiff by the defendants. He submitted that if the defendants are relying upon the documents which are referred to in the proposed amendment, the same can be produced during the cross examination of the plaintiff. He submitted that the written statement was filed by the defendants in the year 2001 when they were fully aware about the proceedings and the order passed thereon. He submitted that there is no reason why the averments which are sought to be incorporated by the amendment could not be incorporated in the original written statement.

7. I have considered the submissions. By the proposed

amendment, the defendants desire to rely upon certain proceedings filed and especially the Original Application before the Maharashtra Administrative Tribunal wherein the plaintiff has been shown as one of the Applicants and a prayer has been made therein directing the defendants to continue the plaintiff and other applicants in their respective posts. A reliance is sought to be placed in the proposed amendment on the orders passed in the Original Application as well as the orders passed by the this Court and Apex court.

8. As an amendment is sought for relying upon the proceedings to which the plaintiff is allegedly a party, the amendment deserves to be allowed. Prima facie, the Plaintiff appears to be a party to the said proceedings. Whether the plaintiff was a party to the said proceedings or not is a issue which is required to be decided at the time of final hearing of the suit.

9. After the amendment is carried out, if the inspection of the relevant documents is not given to the plaintiff, appropriate proceedings can be taken out by the plaintiff. As the plaintiff has already filed affidavit in lieu of examination in chief, after the amendment is carried out, it will be open for the plaintiff to file further affidavit in lieu of examination of chief to deal with the amended written statement.

10. Considering the delay in applying for amendment and considering the stage at which the chamber summons is filed, the defendants will have to pay costs to the plaintiff.

11. Hence, chamber summons is made absolute in terms of prayer clause (b) subject to defendants paying costs of Rs.5,000/- to the plaintiff within a period of ten weeks from today. Payment of costs will be a condition precedent.

12. After the amendment is carried out to the written statement, it will be open for the plaintiff to file further affidavit in lieu of examination in chief within a period of four weeks from the date on which amended written statement is served to the plaintiff.

13. Place the suit for directions on 23rd October 2007.

JUDGE